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SUPREME COURT, U.S.

No. 97-2052

In The

Supreme Court of the United States

October Term, 1997

PETROLEUM HELICOPTERS, INC.,

Petitioner,

v.

MITCHEL BURAS,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Court Of Appeal, Fourth Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

The petition in this case presents a single issue of law: Did the courts of Louisiana erroneously fail to apply the rule of general maritime law applicable to emergency situations in holding Petroleum Helicopters, Inc. ("PHI") liable for respondent Mitchel Buras's injuries? As shown in the petition for certiorari (Pet. 10-15), a reasonable decision made by a pilot in responding to an emergency is not negligence even though another response to the emergency might have been preferable.

1. Significantly, respondent does not dispute PHI's contention that the federal law on responding to emergencies prescribes the standard of care that the trial court *should* have applied in this case. Indeed, Mr. Buras goes so far as to assert that the trial court did apply this standard: "The trial court's ruling and the decision of the Louisiana Fourth Circuit Court of Appeal were made with a full understanding and application of the 'sudden emergency' doctrine." (Opp. 8.) This assertion, however, is belied by the trial court's opinion.

The trial court does not mention – much less apply – the federal law on responding to emergencies. To the contrary, the trial court applied a "duty-risk analysis" that took no account of the fact that the pilot was responding to an emergency. (Pet. App. 37.) According to trial court, the "burden of prevention [of injury to the passengers] . . . is the pivot upon which the issue to be decided . . . turns." (Pet. App. 38.) As a result, the trial court's liability determination turned on its conclusion that "the water landing was a reasonable means of preventing this accident." (Pet. App. 41.) Nowhere in the

trial court's opinion is there any recognition of the federal rule that "the judgment of a competent sailor [or pilot] *in extremis* cannot be impugned." *The Oregon*, 158 U.S. 186, 204 (1895).

2. Respondent Buras recites in much detail the evidence that he claims supports the determination of liability. Although much of that evidence was in dispute at trial,[1] it is for present purposes irrelevant. There is no claim that the trial court's failure to apply the correct standard of care in determining liability was "harmless error." Nor could there be. Only one judge in the Louisiana courts examined the record in this case under the correct standard of care – Judge Plotkin in his dissenting opinion in the Louisiana Court of Appeal. He correctly concluded: "The record evidence in the instant case, taken as a whole, indicates that Talley's decision to continue flying the helicopter to the platform was reasonable under the circumstances." (Pet. App. 25.)

3. In light of the position taken by respondent in his brief in opposition, there is no dispute as to the applicable federal standard of care. Because the trial court and

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[1] Respondent argues, without citation to the record, that ditching the aircraft in the Gulf of Mexico was "mandated by the PHI safety manual and FAA procedures." (Opp. 11.) That claim was hotly disputed at trial. PHI's evidence was neither its manual nor FAA requirements imposed such a Procrustean requirement on the pilot (R., Vol. 4, pp. 116-17, 186, 189.). In that regard, the trial court's assertion that PHI had been cited by the FAA for not ditching the aircraft (Pet. App. 41-42) was clearly erroneous. The testimony at trial was that PHI had only been cited once by the FAA in 40 years and that was for inadequate paperwork on a flight manifest (R., Vol. 4, p. 153).

the court of appeal failed to employ the correct standard of care, petitioner requests that this Court grant the Petition for a Writ of Certiorari.

CONCLUSION

For the foregoing reasons and those set out in the petition for certiorari, petitioner respectfully requests that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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